

REMARKS**Status of Claims**

Claims 1, 2, 8, 11, 17-27, and 30-57 have been cancelled without prejudice or disclaimer. Claim 3 has been placed in independent form. No new matter is added by these amendments.

Restriction Requirement

At the onset, please note that Claims 19-27 and 30-57 were previously cancelled via the Transmittal Letter filed October 15, 2001 (see paragraph 3 on page 2 of that letter). Thus, Claims 19-27 and 30-57 technically should not have been included in the subject restriction requirement.

Applicants hereby elect, with traverse, to prosecute Group II, which includes and is drawn to the “polynucleotide subject matter” of Claims 3-7 and 12-13. Applicants reserve the right to prosecute the non-elected subject matter in subsequent divisional applications.

Applicants traverse the restriction requirement which was imposed in the Office Action mailed December 4, 2003 for at least the following reasons.

Rejoinder of method claims upon allowance of product claims under U.S. practice

Applicants respectfully request that Claims 9-10 (Group I), Claims 14-16 (Group V), Claim 28 (Group XIII) and Claim 29 (Group XIV), drawn to methods of using the elected polynucleotides of Group II should be rejoined per the Commissioner’s Notice in the Official Gazette of March 26, 1996, entitled “Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. § 103(b)” which sets forth the rules, upon allowance of product claims, for rejoinder of process claims covering the same scope of products.

No Undue Burden

Applicants also respectfully submit that there is minimal additional burden on the Examiner to examine Claims 58-63 (Group XX), which are drawn to microarrays with the elected polynucleotides and methods of use thereof. The search required to identify prior art relevant to this claim should substantially overlap with that required for examination of the elected polynucleotides of Group II.

Therefore, Applicants respectfully request that the Examiner withdraw the Restriction Requirement and examine all the claims in a single application.

CONCLUSION

If the Examiner contemplates other action, or if a telephone conference would expedite allowance of the claims, Applicants invite the Examiner to contact the undersigned at the number listed below.

Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. 09-0108.

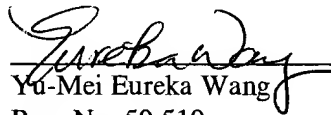
Respectfully submitted,
INCYTE CORPORATION

Date: January 5, 2004



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Date: January 5, 2004



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